



Committee  
), 2014

## County of Los Angeles CHIEF EXECUTIVE OFFICE

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January 10, 2014

To: Audit Committee

From: William T Fujioka  
Chief Executive Officer

### REVIEW OF BOARD POLICY NO. 5.053 – EVALUATION OF VENDORS/CONTRACTORS ENGAGED IN MERGERS OR ACQUISITIONS

In response to the request from the Audit Committee at their regular meeting on October 16, 2013 to revise the subject Board Policy 5.053 and include a reference to the County's Contractor Alert Reporting Database (CARD) manual, this Office, in conjunction with the Internal Services Department, Chief Information Office and County Counsel, are recommending the following changes to the policy and have included the recommended changes in the red-line version:

- Reference Section – Add a link to the “Proposer’s Organization Questionnaire/Affidavit” form (form attached);
- Policy Section – Minor edits for clarification and consistency purposes, and the addition of the following reviews when departments consider the impact of a merger or acquisition:
  - Investigation of whether the vendor/entity is on the list of Federal and State debarred contractors;
  - Investigation of whether the vendor/entity has been placed on the County's CARD, referencing the CARD Manual; and
  - Thorough assessment of the surviving entity's corporate documentation.
- Responsible Department Section – Add Internal Services Department as the lead responsible department; and
- Date Issued Section – Extend the sunset review date to December 13, 2017.

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Attached is the redline version of the policy, the Proposer's Organization Questionnaire/Affidavit form, and the specific subsection that will be added to the CARD Manual, indicating that departments should determine whether to assign the contract to the new entity based on the thorough review as required by the Board Policy, and not solely based on a determination that either vendor/entity was placed in CARD.

If you have any questions regarding this request, please contact Joe Sandoval of Internal Services at (323) 267-2109, or Frank Cheng of my staff at (213) 893-7938.

WTF:SHK:FC  
JJ:JS:ib

Attachments (3)

c: County Counsel  
Chief Information Office  
Internal Services

Rev of Brd Policy 5.053 - Mergers and Acquisitions (Audit Comm) (Memo)



# *Los Angeles County* **BOARD OF SUPERVISORS POLICY MANUAL**

| Policy #:    | Title:  | Effective Date: |
|--------------|---|-----------------|
| <b>5.053</b> | <b>Evaluation of Vendors/Contractors Engaged in Mergers or Acquisitions</b> | <b>12/13/05</b> |

## **PURPOSE**

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Provides guidelines for the evaluation of vendors in the process of proposing/bidding on or negotiating County contracts or contractors who are currently under contract with the County that become engaged in mergers and acquisitions; provides standard contract language addressing the assignment of County contracts; requires notice to the County of pending acquisitions and mergers in County solicitation documents.

## **REFERENCE**

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July 19, 2005, Board Order No. 33

December 13, 2005, Board Order No. 9

Proposer's Organization Questionnaire/Affidavit Form

## **POLICY**

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The County of Los Angeles has experienced situations involving vendors who are in the process of submitting proposals or bids in response to County solicitations, negotiating County contracts, or under contract with the County, and are acquired by or merge with another firm. Given the potential issues the County may face as a result of such acquisitions or mergers, the following guidelines for evaluating such vendors and contractors, and standard language for inclusion in all County solicitation documents and contracts are established:

**GUIDELINES FOR EVALUATING ASSIGNMENTS RESULTING FROM MERGERS OR ACQUISITIONS INVOLVING COUNTY BIDDERS/PROPOSERS AND CONTRACTORS**

Standard terms and conditions for County solicitation documents and agreements require bidders/proposers and contractors to notify the County of planned mergers, acquisitions or other corporate actions that could result in the assignment of a proposal under an active solicitation or an established contract agreement.

Upon a County department's receipt of notice of the proposed assignment resulting from a merger or acquisition, the department must conduct a thorough review of the impact of the merger or acquisition. This review should include, at minimum:

1. Investigation as to whether either vendor/entity is on the County's List of Debarred Contractors, the Federal list of excluded contractors for contracts with Federal funding, and the State's list of debarred contractors. (<http://purchasingcontracts.co.la.ca.us/resources.htm>)
2. Investigation as to whether either vendor/entity has been placed in the County's Contractor Alert Reporting Database (CARD). Specific detail as to the recommended protocol for such investigation is contained in the CARD Manual.
- 2.3. Identification of the name of the proposed or surviving entity following the merger or acquisition.
- 3.4. Identification of the business/legal structure of the surviving entity and the officer(s) authorized to bind the entity contractually.
- 4.5. Identification of the surviving entity's state of incorporation or organization and home office location. A thorough assessment of the surviving entity's corporate documentation.
- 5.6. A thorough assessment of the surviving entity's financial stability. Obtain a copy of the entity's most recent balance sheet, financial statement and/or annual report and any other financial information that reflects the entity's current financial status.
- 6.7. Consideration of the current DUNN & BRADSTREET rating of the surviving entity, if available.
- 7.8. Examination of the surviving entity's business plan related to the service or product for which the County has contracted or is planning to acquire. Determine if the product/service will continue to be supported and for how long it will be supported.

- | 8.9. Investigation of whether there is a comparable product/service being offered by the surviving entity in consideration for replacing the product/service currently in use.
- | 9.10. The surviving entity's written commitment of its willingness to accept all~~meet~~ the ~~full range of~~ terms and conditions stipulated in County's solicitation document, purchase order, or contract agreement, as the case may be.
- | 10.11. Consideration of any other factors that negatively reflect on an entity, which would lead to the conclusion that it would not be in the best interests of the County to enter into or continue the contractual relationship.

## STANDARD LANGUAGE TO BE INCLUDED IN COUNTY CONTRACTS

The following policy language shall be incorporated in substantially similar form into all County contracts:

### "ASSIGNMENT BY CONTRACTOR AND DELEGATION"

- | A. ~~The Contractor shall not assign its rights or delegate its duties under the Agreement~~this Contract, or both, whether in whole or in part, without the prior written consent of County, in its discretion, and any attempted assignment or delegation without such consent shall be null and void. For purposes of this sub-paragraph, County consent shall require a written amendment to the ~~Agreement~~Contract, which is formally approved and executed by the parties. Any payments by the County to any approved delegate or assignee on any claim under the ~~Agreement~~this Contract shall be deductible, at County's sole discretion, against the claims, which the Contractor may have against the County.
- | B. Shareholders, partners, members, or other equity holders of Contractor may transfer, sell, exchange, assign, or divest themselves of any interest they may have therein. However, in the event any such sale, transfer, exchange, assignment, or divestment is effected in such a way as to give majority control of Contractor to any person(s), corporation, partnership, or legal entity other than the majority controlling interest therein at the time of execution of the ~~Agreement~~Contract, such disposition is an assignment requiring the prior written consent of County in accordance with applicable provisions of this ~~Agreement~~Contract.
- | C. Any assumption, assignment, delegation, or takeover of any of the Contractor's duties, responsibilities, obligations, or performance of same by any entity other than the Contractor, whether through assignment, subcontract, delegation,

merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever without County's express prior written approval, shall be a material breach of the ~~Agreement~~ Contract which may result in the termination of ~~the Agreement~~ this Contract. In the event of such termination, County shall be entitled to pursue the same remedies against Contractor as it could pursue in the event of default by Contractor.

## **STANDARD LANGUAGE TO BE INCLUDED IN COUNTY SOLICITATION DOCUMENTS**

The following policy language shall be incorporated in substantially similar form into all County solicitation documents:

### **"NOTIFICATION TO COUNTY OF PENDING ACQUISITIONS/MERGERS BY PROPOSING/BIDDING COMPANY"**

The ~~vendor~~ Proposer/Bidder shall notify the County of any pending acquisitions/mergers of their company. This information shall be provided by the ~~Vendor~~ Proposer/Bidder on *Required Form – Exhibit \_\_\_\_ - Proposer's Organization Questionnaire/Affidavit*. Failure of the ~~vendor~~ Proposer/Bidder to provide this information may eliminate its proposals/bid from any further consideration.

## **RESPONSIBLE DEPARTMENT**

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Internal Services Department

Chief Executive Office

Chief Information Office

County Counsel

## **DATE ISSUED/SUNSET DATE**

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**Issue Date: December 13, 2005**

**Reissue Date: August 20, 2009**

**Review Date: September 23, 2013**

**Sunset Review Date: December 13, 2009**

**Sunset Review Date: December 13, 2013**

**Sunset Review Date: December 13, 2017**

**REQUIRED FORMS - EXHIBIT \_\_\_\_**  
**PROPOSER'S ORGANIZATION QUESTIONNAIRE/AFFIDAVIT**

Page 1 of 2

Please complete, date and sign this form and place it as the first page of your proposal. The person signing the form must be authorized to sign on behalf of the Proposer and to bind the applicant in a Contract.

1. If your firm is a corporation or limited liability company (LLC), state its legal name (as found in your Articles of Incorporation) and State of incorporation:

|       |       |           |
|-------|-------|-----------|
| _____ | _____ | _____     |
| Name  | State | Year Inc. |

2. If your firm is a limited partnership or a sole proprietorship, state the name of the proprietor or managing partner:

\_\_\_\_\_

3. If your firm is doing business under one or more DBA's, please list all DBA's and the County(s) of registration:

|       |                        |                 |
|-------|------------------------|-----------------|
| Name  | County of Registration | Year became DBA |
| _____ | _____                  | _____           |
| _____ | _____                  | _____           |

4. Is your firm wholly or majority owned by, or a subsidiary of, another firm? \_\_\_\_ If yes,

Name of parent firm: \_\_\_\_\_

State of incorporation or registration of parent firm: \_\_\_\_\_

5. Please list any other names your firm has done business as within the last five (5) years.

|       |                     |
|-------|---------------------|
| Name  | Year of Name Change |
| _____ | _____               |
| _____ | _____               |

6. Indicate if your firm is involved in any pending acquisition/merger, including the associated company name. If not applicable, so indicate below.

\_\_\_\_\_  
\_\_\_\_\_

Proposer acknowledges and certifies that it meets and will comply with all of the Minimum Mandatory Requirements listed in Paragraph 1.4 - Minimum Mandatory Requirements, of this Request for Proposal, as listed below.

(list each minimum requirement stated in Paragraph 1.4)

Check the appropriate boxes:

☐ Yes ☐ No \_\_\_\_\_ years experience, within the last \_\_\_\_ years

Proposer further acknowledges that if any false, misleading, incomplete, or deceptively unresponsive statements in connection with this proposal are made, the proposal may be rejected. The evaluation and determination in this area shall be at the Director's sole judgment and his/her judgment shall be final.

Proposer's Name:

\_\_\_\_\_

Address:

\_\_\_\_\_

\_\_\_\_\_

E-mail address: \_\_\_\_\_ Telephone number: \_\_\_\_\_

Fax number: \_\_\_\_\_

On behalf of \_\_\_\_\_ (Proposer's name), I \_\_\_\_\_  
(Name of Proposer's authorized representative), certify that the information contained in this Proposer's Organization Questionnaire/Affidavit is true and correct to the best of my information and belief.

Signature

Internal Revenue Service  
Employer Identification Number

Title

California Business License Number

Date County

WebVen Number



**Contractor Alert Reporting Database (CARD)  
CARD Manual Update for Revised Board Policy 5.053**

With the revision to the Board of Supervisors (Board) policy 5.053 referencing CARD, the following subsection will be added to the updated CARD Manual:

Impact of Mergers/Acquisitions

Board policy 5.053 provides guidelines for evaluating vendors bidding on County contracts and vendors who are currently under contract with the County that are involved in a merger or acquisition.

When a vendor discloses a merger/acquisition in their bid during a County contract solicitation, departments must complete a CARD review [see CARD Manual section VI for the CARD review process] during the bid evaluation for both the vendor and the entity that it plans to merge with or be acquired by. During the CARD review, departments must determine the potential point deduction for each entity, and then deduct points from the bid based on the entity with the more significant deduction.

When a department receives a request from a current contractor to assign their contract to a new entity due to a planned merger/acquisition, Board policy 5.053 requires that the department complete a thorough review of the impact of the merger/acquisition. This review should include an investigation into whether either vendor/entity has been placed in CARD. Departments should determine whether to assign the contract to the new entity based on the thorough review required by Board policy, not solely based on a determination that either vendor/entity was placed in CARD.